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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,208	11/08/1999	EVA SIMMONS	000500-196	2331

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/02/2003

28

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/380,208

Applicant(s)

SIMMONS ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 19. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 25 – 36 and 40 – 42 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roe (US 5,607,760).

With reference to claim 15, Roe discloses a method of achieving in an absorbent article that includes an absorbent body disposed between a liquid-impermeable bottom sheet which is intended to lie distal from a wearer in use, a liquid-permeable upper sheet which is intended to lie proximal to the wearer, and at least one longitudinally extending liquid barrier on each side of a center line of the upper sheet made of essentially liquid-impervious material and fastened along or adjacent to a respective longitudinally extending side extremity of the absorbent article and comprising a free elastic sealing edge intended to be stretched against the wearer as set forth in col. 6, lines 38 – 53, col. 8, lines 50 – 56, col. 15, lines 53 – 56 and col. 25, lines 26 – 32.

Regarding claims 25 – 28, see the rejection of claim 15.

With reference to claims 29 – 34 and 41 – 42, Roe discloses an absorbent article that includes an absorbent body disposed between a liquid-impermeable bottom sheet which is intended to lie distal from a wearer in use, a liquid-permeable upper

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sheet which is intended to lie proximal to the wearer and at least one longitudinally extending liquid barrier on each side of a center line of the upper sheet, made of essentially liquid-impervious material and fastened along or adjacent to a respective longitudinally extending side extremity of the article and including a free elastic sealing edge intended to be stretched against the wearer as set forth in col. 6, lines 38 – 53 and col. 8, lines 50 – 56.

Regarding claims 35 – 36, see col. 8, lines 50 – 56, col. 15, lines 53 – 56 and col. 25, lines 26 – 32.

As to claim 40, Roe discloses an article wherein the sealing edge is comprised of a ribbon-like elastic film in col. 8, lines 50 – 56, through the incorporation of Dragoo (US 4,795,454).

Dragoo discloses an article wherein the sealing edge is comprised of a ribbon-like elastic film as set forth in col. 10, lines 31 – 65.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 – 24 and 37 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760).

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With reference to claims 16 – 24, Roe discloses a method of applying petroleum jelly to the leg cuffs of an absorbent article, thereby increasing the absolute value of ΔP and decreasing the pore radius.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to experiment with the amount of petroleum jelly in order to determine the most effective product since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 37 – 39, absent of a critical teaching and/or unexpected result, the examiner contends that the claimed limitations would be an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

Response to Arguments

Applicant's arguments filed September 23, 2002 have been fully considered but they are not persuasive.

In reply to the applicant's argument that Roe does not suggest increasing the absolute value by influencing wetting angle or pore radius to improve sealing, the examiner disagrees. Roe discloses the use of petrolatum on the leg gathers, which according to page 15 of the applicant's specification, is one way to reduce pore radius and increase the wetting angle. Roe discloses that it is highly desirable (not mandatory) that the diaper **topsheet** (emphasis added) is made of hydrophilic material to promote rapid transfer of liquids through the topsheet (col. 21, lines 40 – 42). However, Roe also discloses a hydrophobic topsheet that may be used with the invention (col. 5, lines 254

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– 35). In the same section relating to the optional hydrophilic surfactant, Roe explains that depending upon the immobilizing agent that is used, an additional hydrophilic surfactant may or may not be required (col. 21, lines 48 – 52). Roe also discloses that when the lotion composition is applied to diaper **topsheets** (emphasis added) immobilizing agents having HLB values below 7 will require the addition of a hydrophilic surfactant. Roe also states that the use of petrolatum will also require the addition of a hydrophilic surfactant. The examiner contends that Roe discloses the use of the hydrophilic surfactant with the petrolatum with respect to its use in the diaper topsheet. The use of the lotion with respect to the leg cuffs (col. 25, lines 26 – 32) does not require the use of the optional hydrophilic surfactant.

Despite this, if one were to consider the applicant's argument as a valid one, the examiner contends that while Roe does teach the addition of a surfactant when using the petrolatum, Roe also discloses the addition of the surfactant at amounts as low as 0.1% (col. 23, lines 10 – 13) which are unlikely to affect the increase in the liquid-skin wetting angle caused by the addition of petrolatum to the skin. In any event, when the leg cuff of Roe is treated with the lotion composition and the article is brought into contact with the wearer, the sealing medium will smear the wearer's skin. As a result, the liquid-skin wetting angle will increase because the normal 74° wetting angle of the skin is now subjected to the 100° wetting angle of the petrolatum which allows the liquid-skin wetting angle to increase as supported by page of the applicant's specification.

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Additionally, to render the leg cuffs hydrophilic would teach away from the basic principle of the leg cuff to prevent leakage. If one were to treat the leg cuffs with a hydrophilic composition, the composition would promote the rapid transfer of fluids through the leg cuffs and result in undesirable leakage.

Further, the examiner would like to point out that the applicant's specification states that having dirty skin vs. clean skin also affects the wetting angle of the skin. What is to say that the diaper of Roe in use (i.e. a diaper after waste has been emitted onto the diaper) vs. a clean diaper not in use will not meet the requirements of the claimed invention?

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., solving the problem with leakage at the standing barrier) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell

Michele Kidwell
December 1, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
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